

HOUSE BILL REPORT

ESB 5915

As Passed House:

April 25, 2009

Title: An act relating to authorizing emergency rule making when necessary to implement budget appropriations and reductions.

Brief Description: Authorizing emergency rule making when necessary to implement budget appropriations and reductions.

Sponsors: Senators Prentice and Fairley; by request of Office of Financial Management.

Brief History:

Committee Activity:

Ways & Means: 4/25/09 [DP].

Floor Activity

Passed House: 4/25/09, 57-37.

Brief Summary of Engrossed Bill

- Authorizes agencies to adopt emergency rules to implement the requirements and reductions in appropriations enacted in any budget for Fiscal Years 2009, 2010, or 2011.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross and Schmick.

Staff: Tracey O'Brien (786-7196)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A rule or regulation is a written policy or procedure by a state agency that is generally applicable to a group of people, industries, activities, or circumstances. Rules are adopted by an agency through a process mandated by the Washington Administrative Procedures Act (APA). The APA sets out exactly what steps an agency must follow to adopt rules.

To meet the legislative intent of providing greater public access to administrative rulemaking and to promote consensus among interested parties, agencies are required to solicit comments from the public on the subject of possible rulemaking prior to filing a notice of proposed rulemaking with the Office of the Code Reviser (Code Reviser). In addition, each agency must prepare a semiannual agenda for rules under development that must be published in the State Register. This agenda must be sent within three days of publication in the State Register to any person who has requested the receipt of a copy of the agenda. Agencies must also maintain a rulemaking docket containing a listing of each pending rulemaking proceeding.

Upon filing notice of the proposed rule with the Code Reviser, an adopting agency must have copies of the notice on file and available for public inspection. Within three days of its publication in the State Register, an agency must either mail a copy of the proposed rule or a summary of the information to each person, city, and county that has made a request to receive such notices.

As a prerequisite to adopting new administrative rules, an agency must hold a rulemaking hearing at which the agency will receive public comment on the proposed administrative rules. Under the APA, an agency must publish a notice of the hearing in the State Register at least 20 days prior to the date of the public rulemaking hearing. In addition to providing an opportunity for oral comments at the public hearing, an agency may accept written comments. Rulemaking hearings are legislative in character and are open to the public. A record of the hearing shall be made by stenographic, mechanical, or electronic means.

An agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. An agency must file with the Code Reviser a certified copy of all rules it adopts.

Under certain circumstances, an agency may adopt, amend, or repeal administrative rules without following the standard procedures. An emergency rule, amendment, or repealer takes effect upon the filing with the Code Reviser, unless a later date is specified in the order of adoption. Emergency rules, amendments, or repealers may only be in effect for 120 days or less after filing. An agency may adopt such emergency rules, amendments, or repealers if it finds good cause that:

- immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; or
- state or federal law, federal rule, or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

An agency must incorporate its finding and a concise statement of the reasons for its findings in the order for the adoption of the emergency rule, amendment, or repealer filed with the Code Reviser.

Summary of Bill:

An agency may adopt such emergency rules, amendments or repealers in order to implement the requirements or reductions in appropriations enacted in any budget for Fiscal Years 2009, 2010, or 2011, if observing the time requirements of notice and opportunity to comment upon the adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill was developed originally in conjunction with the Governor's budget. The budgets developed, including the budget that has passed the House of Representatives, assume cost savings at the beginning of the fiscal year. In many cases, this would require an agency to adopt, amend, or repeal current rules. Given the time required for standard rulemaking under the APA, an agency may need to utilize the emergency rulemaking process. The Office of the Attorney General has advised that it is questionable to adopt emergency rules to implement cost savings based on the exception for the public health, safety, or welfare. This bill would allow a 120-day window for the cost saving to begin. An agency still has to go through the regular rulemaking process for permanent rules and that will still include public rulemaking hearings and opportunity for public comment.

(Opposed) None.

Persons Testifying: Julie Murray, Office of Financial Management.

Persons Signed In To Testify But Not Testifying: None.